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(2)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Criminal Appeal No. 2424 /99.

(11992) 10/9/99 S.K. Jain Adv.

Appellant In Jail :- Kamal Narayan aged 50 yrs, son of Thakur Ram, R/o village Leharsi, P.S. Rajim Distt Raipur. M.P.

versus.

Non Applicant :- State of M.P. through P.S. Rajim Distt Raipur M.P.

Conviction	Sentence
U/S 304 (1) I.P.C.	R.I. for life and fine of Rs. 1000/- in default of non payment of fine R.I. for six months
u/s 308 I.P.C.	R.I for 7 yrs, sentence to run concurrently.

CRIMINAL APPEAL UNDER SECTION 374 (2) CR. P.C.

(16)

(5)

HIGH COURT OF CHHATTISGARH AT BILASPUR

CORAM :- Hon'ble Shri L.C. Bhadoo, J &
Hon'ble Shri V.K. Shrivastava, J

CRIMINAL APPEAL NO. 2421 OF 1999

Kamal Narayan

Vs.

State of Chhattisgarh

Judgment for consideration

Sd/-
V.K. Shrivastava
Judge
25-09-2006

Hon'ble Shri Justice L.C. Bhadoo

Sd/-
L.C. BHADOO
Judge
25-09-2006

Post for 26-09-2006

Sd/-
V.K. Shrivastava
Judge

(17)

HIGH COURT OF CHHATTISGARH : BILASPUR
(Division Bench)

CORAM: **Hon'ble Shri L.C. Bhadoo &**
Hon'ble Shri V.K. Shrivastava, JJ.

CRIMINAL APPEAL No. 2421/99

Appellant (In Jail)	Kamal Narayan, aged 50 years, s/o. Thakur Ram, r/o. village Lohari, PS: Rajim, Dist. Raipur, (CG).
	Vs.
Respondent	State of Chhattisgarh

PRESENT

Ms. Minu Banerjee, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for respondent/State.

JUDGMENT
(Delivered on 26/09/2006)

Per Vijay Kumar Shrivastava, J.

This appeal under Section 374 (2) of the Cr. P. C. is directed against the judgment of conviction and order of sentence dated 11/08/1999 passed by VII Additional Sessions Judge, Raipur, in Sessions Trial No. 157/99 whereby learned Additional Sessions Judge, after holding the appellant guilty for committing offence punishable under Sections 304 Part 1, 308 and 328 of the I.P.C., sentenced him under Section 304 Part I of the IPC to undergo imprisonment for life and to pay a fine of Rs.1000/- (Rupees one Thousand), in default of payment of fine to further undergo R.I. for six months and under Section 308 of the IPC to undergo rigorous imprisonment for seven years. As the appellant

was sentenced under Section 308 of the IPC, no additional punishment under Section 328 of the IPC has been imposed.

2) The case of the prosecution, in brief, is that Pushpabai had illicit relation with Ganeshram, therefore, appellant convened a community meeting and according to the decision of community, Pushpabai was allowed to live with Ganeshram and an amount of Rs.750/- was paid to appellant towards his matrimonial expenses, therefore, appellant was annoyed with his community members. On 14/02/1999 appellant's community i.e., Sahu Samaj organized an inaugural ceremony of Dharmshala building constructed by Sahu Samaj and to celebrate this event, Satyanarayan Pooja and lunch were also organized. Appellant was assigned the work of preparation of *holy Prasad*, its distribution and to serve drinking water to the guests. Appellant in order to take revenge with the community mixed *aluminum* phosphate commonly known as salphas in *holy prasad* and when Pooja was over, the *holy prasad* was distributed amongst persons who were attending the Pooja. After Pooja a procession was also started from the place of Pooja, but the procession after covering some distance, was interrupted because a number of persons (men, women and children) started vomiting.

3) An intimation was given to Police Station; Rajim. Information was recorded in Police Station and Station House Officer K.K. Mudliar rushed to the place of the occurrence and on the report of Dhaniram, SHO recorded first information report under Sections 328 and 307 of the IPC and started investigation. In the meanwhile, on receiving the information, Dr. P. Kudesia and

Dr. A.K. Sakhiya reached the place of occurrence and provided medical aid to persons who had consumed *holy prasad.* The persons who were infected on account of consuming *holy prasad,* were medically examined by both the medical officers. A child namely Mukesh who had also consumed *holy prasad,* was examined by the medical officer, who subsequently died on the same day. After receiving intimation in the village itself, Station House Officer K.K. Mudiliar, recorded merg intimation, conducted inquest and sent the dead body of Mukesh for postmortem.

4) During investigation, statements of witnesses were recorded under Section 161 of Cr.P.C. From the spot, plain earth and earth having vomiting were collected and seized. Sample of *holy prasad* was also recovered and seized. Appellant was taken into custody and his memorandum statement was recorded and at his instance one container of aluminum having three tablets of aluminum phosphate and one packet of zinc phosphate were seized, a full pant, worn by him after getting it removed from his body was also seized. Both the medical officers who examined a number of persons at the request of Police officers, opined that those persons were vomiting as a result of consuming suspected poisoning.

5) Dr. P. Kudesia (PW/14) who conducted autopsy of the body of Mukesh, preserved viscera and opined that the deceased died due to asphyxia as a result of suspected poisoning. All the articles collected and seized were sent for chemical examination. Chemical examiner on examining the sample of *holy prasad,* earth containing vomiting material, viscera, full pant recovered from the

appellant and three tablets having aluminum phosphate commonly known as salphas. After due investigation, challan was filed in the Court of Judicial Magistrate, Ist Class, Gariyaband who committed the case to the court of Sessions, Raipur for trial.

6) Charges under Sections 328, 304 and 307 of the I.P.C. were framed against the appellant and the same were read over and explained to him who abjured the guilt and pleaded that he is innocent and has been falsely implicated in the case by his own brother Hiralal and Hemkumar. Learned trial Court after appreciating the evidence held appellant guilty for the complete episode and convicted and sentenced him accordingly.

7) Dr. P. Kudesia (PW/14) in his statement deposed that on 15/02/1999 he conducted postmortem on the body of Mukesh aged about 4 years s/o. Omprakash Sahu and on postmortem he found that the deceased Mukesh died due to asphyxia as a result of suspected poisoning. He preserved viscera and after adopting procedure regarding sealing the articles, he sent viscera to Police Station: Rajim for chemical examination and his report is Ex.P.93. In his cross examination nothing has been elicited which may cause his evidence untrustworthy or unreliable. From the statement of Investigating Officer K.K. Mudiliar (PW/9), it is established that vide Ex.P/132, all the seized articles were sent to FSL, Rapur and report Ex.P.133 thereof was received. As per report Ex.P.133 the presence of aluminum phosphate commonly known as salphas was found in viscera, thus, it is established that as a result of that Mukesh died of asphyxia due to poisoning.

8) Dr. P. Kudesia (PW/14) in his statement stated that he examined Gendlal, Nohar, Nikita, Rekha, Tikeswari, Sonbai, Ku. Purnima, Varsha, Kejabai, Homanlal, Parvatibai, Pardeshiram, Vishalram, Tominbai, Ghanshyam, Jitendra. Champabai, Neelkamal, Rituram, Chandrika Prasad, Ramkumar, Deendayal, Sukluram, Sontishibai, Khileswar, Champabai, Dayaram, Phoolbai, Sukhvatinbai, Shikhar Yadav, Kirti Sahu, Shyamlal, Kamoutinbai, K.P.Tiwari, Chhabilal, Sunitabai, Dwarika Prasad Rajkumar, Radhabai, Janakram, Santibai, Bisahinbai Lakshman, Champeshwari, Upender, Nitu, Bhupendra, Lokeshwar, Devanand, Jugal Kishore, Kantibai, Manju, Digeswari, Sukaro, Dularobai, Tikeshwari, Lakshminarayan, Chameli, Sunita, Meenabai, Kejabai, Neelaram, Johatram, Devnarayan Ku.Akta Tiwari, Polaram, Lomasram, Yogeshwar, S. Kumar, Samadhruv, Kuleshwari, Dayabai, Bhagwatin, Toran Sahu, Thaneshwar, Ku. Pappi, Chetan, Mahesh Kumar, Champeshwar and his report is Exs.P/12 to 92. Dr. A.K. Sakhiya (PW/15) in his statement deposed that he examined Ku. Devtinbai, Dhanesh Sahu, Komalram Sahu, Yogesh, Bhuneshwari, Abhisha, Gulshankumar, Kunjbai, Sushil, Kavita, Dihuram, Santoshkumar, Kuntibai, Sonia, Sahodrabai, Shyamkali, Vijay Lakshmi, Roshni, Ku. Rani, Purnima, Deepak Sahu, Gitabai, Kranti Sahu, Suraj Sahu, Shravan Kumar, Yogendra Sahu, Chaman Sahu, Saroj Sahu, Likeshwari, Bhushan, Govinda, Mithila, Kamlesh and his report is Exs. P/ 94 to P/126. After examination, both the medical officers only on the basis of history of vomiting have given their opinion of suspected poisoning.

9) K.K. Mudiliar – Investigating Officer (PW/19) vide Ex.P/16 collected plain earth and earth containing vomiting from Omprakash Sahu and proved the document in Court by his statement. From his statement, it is also clear that those articles have been collected from the spot, i.e., the house of deceased Mukesh. Both the articles are examined by chemical examiner and vide his report Ex.P/133, earth containing vomiting material was found with *aluminum* phosphate, therefore, vomiting of Mukesh was containing the poisonous material.

10) To establish that all other persons except Mukesh who consumed *holy prasad* had consumed poisonous *holy prasad* that caused vomiting, it was necessary to collect the vomiting material of all those persons and was required to be examined. But, during investigation no such attempt has been made by the prosecution neither prosecution collected the vomiting material of others nor got it examined. Therefore, except Mukesh, rest of the persons also consumed poisonous *prasad* was not proved beyond doubt.

11) As far as law regarding murder by poison is concerned, Hon'ble the Apex Court rendering the judgment passed in ***Anant Chintaman Lagu Vs. The State of Bombay, reported in AIR 1960 SC 500 (V 47 C 85),*** held that:

> *"The prosecution must establish in a case of poisoning: (a) that death took place by poisoning; (b) that the accused had the poison in his possession; and (c) that the accused had an opportunity to administer the poison to the deceased. Though these three propositions must be kept in mind*

always, the sufficiency of the evidence direct or circumstantial, to establish murder by poisoning will depend on the facts of each case. If the evidence in a particular case does not justify the inference that death is the result of poisoning because of the failure of the prosecution to prove the fact satisfactorily, either directly or by circumstantial evidence, then the benefit of the doubt will have to be given to the accused person. But if circumstantial evidence, in the absence of direct proof of the three elements, is so decisive that the court can unhesitatingly hold that death was a result of administration of poison (though not detected) and that the poison must have been administered by the accused person, then the conviction can be rested on it. Cr.A.No.120 of 1957, D/- 19-2-1958 (SC) and Cr.A.No.98 of 1958, D/4-11-1958 (SC) Ref."

12) Appellant did not dispute that on the date of incident inaugural ceremony of Dharmshala was organized and he was present on that occasion and was assigned the work of serving the drinking water to the guests. Omprakash Sahu (PW/2) in his evidence has deposed that the work of cooking food and *holy prasad* was allotted to appellant-Kamalnarayan and others namely Vijay and Neelkant who cooked *holy prasad* and kept it. Lomasram Sahu (PW/3) in his evidence has deposed that the work of preparation of *holy Prasad* was allotted to Neelkant, Vijay, Bisru and appellant was assigned the work of supplying drinking water. Vijay (PW/6) in his statement stated that they were preparing *holy prasad* and appellant was present there. After preparing *holy prasad*, they kept it in the school. Appellant remained there chopping the vegetables.

13) In their cross examination we do not find any substantial material so as to disbelieve them. *Therefore, from their evidence, it is established that when the holy prasad was prepared and kept, appellant was present there and was remained in isolation nearby holy prasad.*

14) Shiv Kumar (PW/4) in his evidence has stated that after eating *holy prasad* persons started vomiting, therefore, persons involved in preparing the *holy prasad* were enquired and at that time it was told that appellant was fleeing, thereafter he was caught and brought who in the first spell denied mixing anything in *holy prasad*, but later when he was again asked he confessed that he had mixed insecticide tablets (Chuha Mar Goli) and on search materials found in *holy prasad*, similar to those were found in his pocket having smell of insecticide. He was given *holy prasad*, but he denied to eat the same. On close scrutiny of his statement, we do not find any substantial material so as to hold his evidence incredible. Therefore, from his statement, it was established that when the persons after consuming *holy prasad* were in trouble and were suffering from vomiting, *appellant attempted to flee from there who on enquiry initially denied administering some poisonous substance in holy prasad, but subsequently confessed it* and material found in *holy prasad* similar material were found in his pocket with smell of insecticide.

15) Investigating Officer, K.K. Mudiliar (PW/19) in his statement deposed that on 15/02/1999 he collected 100 grams of sample of *holy prasad* and seized the same vide Ex.P/8. He took

the appellant into custody, recorded his memorandum statement Ex.P.11 and at his instance insecticide tablets (Chuha Mar Goli) vide Ex.P/9 from his possession along with container were seized. Full pant of appellant was also seized vide Ex.P.10. His statement has been corroborated by the evidence of Bhuneshwar Sahu (PW/9) who supports the seizure of sample of *holy prasad*, memorandum statement of appellant, recovery of full pant, and recovery of insecticide from the possession of appellant. He further stated that the materials were sent to FSL, Sagar, for examination vide Ex.P/132 and report Ex.P/133 thereof was received. Nothing has been elicited in their cross examination so as to disbelieve their version. Therefore, from their statements, it is established that at the instance of the appellant, insecticide tablets kept inside the Dibbi and packet were seized. His full pant and sample of *holy prasad* were seized. On chemical examination it was found that the *holy prasad*, full pant and insecticide found in Dibbi were aluminum phosphate commonly known as salphas. *Therefore, it is established that the poison found in possession of the appellant was the same poison that was kept by the appellant in his pocket and was found mixed in holy prasad.*

16) From the above proved circumstances, when each one is put in a chain, it makes clear that the appellant collected the insecticide tablets i.e., aluminum phosphate commonly known as salphas, kept those in his house and for administering the same in *holy prasad*, crushed some of those tablets kept in his pocket and when he was present in isolation near the *holy prasad* got an opportunity to mix the same into *holy prasad* and he did it,

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thereafter when the distribution of *holy prasad* was over, he left the place, but was caught and brought where on enquiry he confessed that he mixed insecticide tablets and when he too was offered *holy prasad*, he refused to eat the same. On search made by public, material found in *holy prasad* were also found in his pocket and his pocket was filled with smell of insecticide.

17) Omprakash Sahu (PW/2) in his statement deposed that after *holy prasad* was distributed to them, he and his son Mukesh took the *holy prasad* and ate it, after an hour they started vomiting, they were treated by doctor, but his son Mukesh died in the night. Nothing has been brought to discredit his statement. From his evidence and foregoing circumstances, it is proved that deceased Mukesh got the *holy prasad*, ate it and as a result of consuming poisonous *holy prasad* he started vomiting, subsequently as a result of that poison he died due to asphyxia., and that *holy prasad* was made poisonous by the appellant by administering the poisonous substance i.e., aluminum phosphate.

18) In the result, the appeal partly succeeds. Conviction under Section 328 of the IPC and conviction under Section 308 of the IPC and sentence imposed for committing the offence under Section 308 of the IPC are set aside. Conviction and order of sentence passed by the trial Court against the appellant for committing offence under Section 304 Part I of the IPC are maintained.

Sd/-
L.C. BHADOO
Judge

Sd/-
V.K. Shrivastava
Judge

Raju